SUPREME COURT OF THE UNITED STATES.

No. 289.

DECEMBER TERM, 1868.

THE UNITED STATES EX REL. EDWARD H. LEARNED, PLAINTIFF IN ERROR,

vs.

THE MAYOR AND ALDERMEN OF THE CITY OF BURLINGTON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the Circuit Court of the United States for the district of Iowa, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea, which is in said Circuit Court, before you, between the U. S. *ex rel.* Henry Amy, plaintiff, and the mayor and aldermen of the city of Burlington, defendant, a manifest error hath happened, to the great damage of the said plaintiff, as by his complaint appears; and we, being willing that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this 2d day of June, in the year of our Lord one thousand eight hundred and sixty-eight, and of the independence of the United States the ninety-second.

In testimony whereof the clerk of said court has affixed his name and seal of said Circuit Court the date above written.

[SEAL.]

W. G. WOODWARD,
Clerk of the Circuit Court of the United States, Dist. of Iowa.

The execution of this writ appears by the transcript hereto annexed. A copy of this writ was lodged in this office for the defendant on the 2d day of June, 1868.

W. G. WOODWARD, *Clerk.*

2 UNITED STATES OF AMERICA, *ss:*

To the mayor and aldermen of the city of Burlington, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on first Monday in December next, pursuant to a writ of error filed in the clerk's office of the Circuit Court of the United States for the district of Iowa, wherein the United States on the relation of Henry Amy is plaintiff, and the mayor and aldermen of the city of Burlington are defendants in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Sam'l F. Miller, one of the justices of the said Supreme Court of the United States, this 16th day of June, in the year of our Lord 1868.

SAM. F. MILLER,
One of the Justices of the Supreme Court of the United States.

Def't accepts service of above by copy, &c.
June 21, 1868.

H. STRONG,
Att'y for Mayor & Alderman of City of Burlington.

3 Due and legal service hereof accepted this 21 day of June, A. D. 1868, and copy received.

H. STRONG,
Att'y for the Mayor & Aldermen of the City of Burlington.

4 THE UNITED STATES EX REL. HENRY AMY *vs.* THE MAYOR & ALDERMEN OF THE CITY OF Burlington. } No. 469, in Cir. Ct.

Proceedings before the Circuit Court of the United States in and for the district of Iowa, at a term thereof begun and holden at Des Moines, on the second Tuesday of May, A. D. 1868.

Be it remembered that on the 16th day of October, A. D. 1867, there was filed in the office of the clerk of the said court a petition in the words and figures following, that is to say:

5 In the Circuit Court of the United States for the district of Iowa, October term, A. D. 1867.

Petition for mandamus.

THE UNITED STATES ON THE RELATION of Henry Amy *vs.* THE MAYOR & ALDERMEN OF THE City of Burlington.

To the judges of the United States Circuit Court for the district of Iowa:

Henry Amy, who avers that he is a citizen of the State of New York, gives this court to be informed, that on the 16th day of May, A. D. 1867, by the judgment and consideration of this court, upon due process of law, he recovered against the city of Burlington judgment for the sum of $10,488 56 and costs, taxed at $37 75, and interest at 7 per cent. from the date of said judgment.

6 That on the 15th day of May, A. D. 1867, one Wm. B. Glover, a citizen of the State of Connecticut, by the judgment and consideration of this court, due upon process of law, recovered judgment against the city of Burlington for the sum of $9,430 and costs, taxed at $157 30, and interest at 10 per cent. from the date of said judgment, which said judgment has been duly assigned to the relator, and of said assignment a copy is hereto attached.

That said city of Burlington is a municipal corporation created by and a citizen of the State of Iowa; that its municipal affairs are conducted and managed by a mayor and aldermen, who perform all the duties of said corporation in relation to levying and causing to be collected taxes, and paying the debts of the corporation.

That executions have been issued on said judgments, and returned no property found, to which judgments and executions now in this court, and subject to its inspection, reference is hereby made; that said city has no property subject to execution out of which said judgments can be made; that, by the general laws of the State of Iowa, all the property of a public nature owned by the said corporation is exempt from execution; that the said general laws of the State of Iowa require in such case that the mayor and aldermen of
7 the said city should levy a tax as early as practicable to pay said judgments; that said mayor and aldermen are authorized by the charter of said city to levy a tax of one per cent. per year on all the taxable property of said city, which amounts to about the sum of three millions of dollars.

That, under these laws, it was the duty of the mayor and aldermen of said city to levy a tax of at least one per cent. on the valuation in said city in the year 1866, to pay said judgments, interest and costs; that they have neglected to do so, though sufficient time for that purpose has elapsed, and demands have been made on them to levy sufficient taxes to pay said judgment; that a levy of one per cent., in a single year, is not sufficient, after paying the costs of levying and collecting, to pay said judgments, interest and costs.

The relator is without other adequate remedy at law, and he prays of this court that a writ of mandamus may be issued from this court, commanding the mayor and aldermen of the city of Burlington to forthwith levy and collect a tax on the taxable property of said city for the year 1867, sufficient to pay said judgments, and to apply the said tax, when collected, to the payment of said judgment of $10,488 56 costs, taxed at $37 75, and 7 p. c. interest from
8 May 16th, 1867, and of $9,430, and costs $157 30, and 10 p. c. interest from May 15th, 1867, and the costs of this proceeding, and for such other relief as relators case requires.

(Signed) HENRY AMY.

STATE OF IOWA, *Scott County, ss*:

I, J. Grant, do state on oath, that I am the attorney of the relator, and have a personal knowledge of the recovery and non-payment of said judgments, demand for levy of taxes, and believe all the allegations of said petition to be true.

(Signed) JAMES GRANT.

Subscribed and sworn to by J. Grant, before me, and in my presence, this 20th day of Sept., 1867.

[SEAL.] (Signed) S. F. SMITH,
N. P., Scott Co., Iowa.

Filed Octo. 16th, 1867.
(Signed) W. G. WOODWARD, *Clerk.*

In United States Circuit Court.

9 *Copy of assignment of judgment.*

WM. B. GLOVER
vs.
CITY OF BURLINGTON.

Judgment May 15, 1867, for $9,430 costs, and 10 p. c. interest.

For value received we do hereby assign unto Henry Amy the above judgment, and subrogate him to all our rights therein, with full power of collection, satisfaction, &c.

(Signed) SMITH P. GLOVER,
Executor of Wm. B. Glover, deceased.

And afterwards, to wit, on the 16th day of October, A. D. 1867, it then being of the October term of the said Circuit Court, the following order and entry of record was made, viz:

U. S. EX REL. HENRY AMY
v.
THE MAYOR & ALDERMEN OF BURLINGTON.

This cause now coming on to be heard, Grant for the plaintiff, files his information for a writ of mandamus, and the court doth order that the alternative writ issue as prayed for, returnable at the next term of this court.

10 And afterwards, to wit, on the 16th day of October, A. D. 1867, a writ of alternative mandamus was issued in the words and figures following, that is to say:

The United States of America to the mayor and aldermen of the city of Burlington:

Whereas it has been represented to our Circuit Court of the United States for the district of Iowa that Henry Amy is a citizen of the State of New York, and has given this court to be informed that on the 16th day of May, A. D. 1867, by the judgment and consideration of this court, upon due process of law, he recovered against the city of Burlington judgment for the sum of $10,488 56 and costs, taxed at $37 75, and interest at 7 p. c. from the date of said judgment.

11 That on the 15th day of May, A. D. 1867, one Wm. B. Glover, a citizen of the State of Connecticut, by the judgment and consideration of this court, upon due process of law, recovered judgment against the city of Burlington for the sum of $9,430 and costs, taxed at $157 30, and interest at ten per cent. from

the date of said judgment, which said judgment has been duly assigned to the relator.

That said city of Burlington is a municipal corporation, created by, and a citizen of, the State of Iowa; that its municipal affairs are conducted and managed by a mayor and aldermen, who perform all the duties of said corporation in relation to levying and causing to be collected taxes, and paying the debts of the corporation.

That executions have been issued on said judgments, and returned no property found, to which judgment and executions, now in this court, and subject to its inspection, reference is hereby made.

That said city has no property subject to execution out of which said judgments can be made; that by the general laws of the State of Iowa, all the property of a public nature owned by the said corporation is exempt from execution; that the said general laws for the State of Iowa require in such case that the mayor and alder-
12 men of the said city should levy a tax as early as practicable to pay said judgments.

That said mayor and aldermen are authorized by the charter of said city to levy a tax of one per cent. per year upon all the taxable property of said city, which amounts to about the sum of three millions of dollars.

That under these laws it was the duty of the mayor and aldermen of said city to levy a tax of at least one per cent. on the valuation in said city, in the year 1866, to pay said judgments, interests and costs.

That they have neglected to do so, though sufficient time has elapsed for that purpose, and demands have been made on them to levy sufficient taxes to pay said judgment.

That a levy of one per cent. in a single year is not sufficient, after paying the costs of levying and collecting, to pay said judgments, and interest, and costs:

Now, therefore, we being willing that full and speedy justice should be done in the premises, do hereby command you, the said mayor and aldermen of the city of Burlington, to forthwith levy and collect a tax on the taxable property of said city for the year 1867 sufficient to pay said judgments, and to apply the said tax
13 when collected to the payment of said judgments of $10,488 56 costs, taxed at $37 75, and 7 p. c. interest from May 16th, 1867, and $9,430, and costs $157 30, and 10 p. c. interest from May 15th, 1867, and the costs of this proceeding, or that you appear before our said Circuit Court at Des Moines, at the court-house in Polk county, on the 12th day of May, A. D. 1868, to show cause why you refuse so to do.

Witness the Hon. Salmon P. Chase, Chief Justice of our Supreme Court, and the seal of said Circuit Court, this 12th day of October, A. D. 1867.

[SEAL.] (Signed) W. G. WOODWARD, *Clerk.*

Filed May 12th, 1868.

(Signed) W. G. WOODWARD, *Clerk.*

And on the 14th day of May, A. D. 1868, the following order was entered of record:

U. S. EX REL. HENRY AMY
v.
THE MAYOR & ALD. OF CITY OF BURLINGTON. } No. 469.

In this cause leave is given to move or plead by Tuesday
14 of the 3d week.

And afterward, on the 21st day of May, A. D. 1868, it then being of the May term of the said court, 1868, an answer to the said writ of alternative mandamus was filed, being in the words following, viz:

Circuit Court of the United States, district of Iowa.

Answer to alternative writ.

THE UNITED STATES UPON RELATION OF HENRY Amy
vs.
THE MAYOR & ALDERMEN OF CITY OF BURlington.

Now come the mayor and aldermen of the city of Burlington, and for answer to the alternative writ of mandamus, state—

They ever have been and now are well disposed to obey all orders and mandates of this court in the premises, and they show as a cause why they have not obeyed said alternative writ of mandamus by levying said tax, and why the peremptory writ of mandamus should not issue,

That, as the common council of said city, they have no power or legal authority to levy any tax whatever, except in the manner and for the purpose and to the extent provided in the charter of
15 the said city and its amendments, which are public statutes and are hereby referred to and made a part of this answer.

That by said charter it is provided as follows, to wit: that to defray the current expenses of the city, the city council (which is comprised of these respondents) shall have the power to levy and collect taxes on all the real and personal property of said city, not exempt by the general law from taxation; provided that the amount of tax levied shall not in any one year exceed one dollar on each one hundred dollars worth of property taxed.

That heretofore for many years, to wit, ever since the maturity of said obligations upon which relator recovered said judgments, the said city council have levied said tax of one per cent. upon all of the taxable property in said city, and the proceeds of such levy, when collected, have been appropriated and expended in paying the current expenses of the city, and the whole amount of said levy has been necessary to pay the actual necessary current expenses of the city and to maintain and preserve its chartered rights, powers, and obligations, and the entire revenue of the said city has, in good faith

and without any evasion, been appropriated, used, and expended for such purpose, and there is no surplus thereof remaining un-
16 expended.

That the assessed value of all the taxable property within said city is about $3,200,000 dollars and no more. That the assessment for the year A. D. 1868, has not yet been made out and completed, and the time prescribed by law for making the same has not expired; that the said assessment is now being made out by the assessor of said city, but that the same will not amount to more than the amount above stated, and the said tax will be levied in June next. That it will require the appropriation and expenditure of the levy of one per cent. thereon to meet and pay the actual current necessary expenses of the city, and to preserve the corporate existence and government of the city for the year A. D. 1868, to pay the officers and police of the city, to enforce the laws and ordinances and preserve the peace of the city, and thereby to protect the citizens thereof in [in] their rights of person and property, to repair and maintain the gutters, streets, alleys, and ways and wharves of said city, to abate nuisances and to keep the said streets in a cleanly and healthful condition, to maintain the fire department, and in all ordinary and needful ways to pay the expenses actually necessary to maintain the existence and perform the obligations of said corporation.

17 That manney of the streets of said city are in a dangerous and impassable condition on account of want of means to repair the same, and the citizens are continually liable to suffer great inconvenience and injury on account of the condition of said streets, and the city is in danger of becoming liable and being compelled to pay large damages for and on account of injuries to its citizens growing out of the present dangerous condition of many of the streets and alleys.

That the law requires said city, and respondents as its proper officers, to keep the streets of said city in a passable and safe condition for use and travel.

That a stream, known as "Hawkeye Creek," runs through the centre of said city for more than a mile; that the embankments and walls protecting and preventing the overflow of said stream, and the bridges crossing the same, have been destroyed to a great extent, and large expenditures are absolutely needed and will be needed during the current year to repair and maintain the same, and to prevent great loss, injury, and damage growing out of the want of protection to the property in said city against the overflow and washing of the water of said stream and the injury to the property and health of the citizens thereby, and the want of bridges to cross the
18 same.

That other important and necessary streets and crossings in said city have been greatly damaged and rendered impassable by recent heavy rains, and now absolutely need repair to make them passable, and to open the gutters and water ways of the city, and the amount of money needed and actually required to make the said repairs upon said streets, is more than the entire levy of one per

cent. on the assessed value of said property in said city, and the said city is greatly indebted, and has no credit, and cannot borrow money to pay for said repairs and to meet the necessary current expenses of the corporation.

Respondents file a copy from the report of the mayor, showing in what manner the one per cent., levied for the year 1867, was expended, marked "Exhibit A."

Respondents deny that it is their duty to levy, collect, and appropriate the tax for which relator prays; deny that they have failed in any particular to discharge their full duty in the premises.

Respondents say said charter of said city was created prior to the year A. D. 1851, and respondents pray to be dismissed.

(Signed) H. STRONG,
Att'y for the Respondents.

I, L. Teedrick, on oath state I am president of city council
19 of Burlington; that the mayor is absent; that I believe the allegations in foregoing answer are true.

(Signed) L. TEEDRICK,
Mayor pro tem.

Subscribed and sworn to by L. Teederick, before me this 15th May, 1868.

(Signed) SEWARD SMITH.
Notary Public, Polk Co., Iowa.

Filed May 21st, 1868.
(Signed). W. G. WOODWARD, *Clerk.*

20 And on the same 21st day of May, A. D. 1868, was filed the following demurrer to the said answer, to wit:

Circuit Court of the United States for the district of Iowa.

Demurrer.

THE UNITED STATES ON THE RELATION OF
Henry Amy
vs.
THE MAYOR AND ALDERMEN OF THE
city of Burlington, Iowa.

Now comes the plaintiff, by Grant, his attorney, and says he ought not to be barred from having his writ by reason of anything in said return alleged, because he says the same is not sufficient in law to bar the relief sought; wherefore he prays judgment, &c.

And for cause of demurrer to said return the plaintiffs says:

1st. This writ is applied for under the code of 1851, in
21 force when the bonds were issued, where execution has been issued and returned nulla bona, and is not for any relief under the special laws in relation to the city before that time.

The execution law of 1851 provides that in such cases as is made by the petition and writ a tax shall be levied sufficient to pay the judgment and the special restrictions of the city charter, either before or after the code of 1851, do not and cannot alter the rights under it accruing to the relator, which rights are irrepealable.

2d. Because the return does not set out specific expenditures or necessity for expenditures under the city charter, which the plaintiff could traverse and try before a jury, or to which he could demur and ask for the judgment of the court.

3d. Because no account of expenses referred to as being made by the mayor is annexed to the return.

4th. Because no bar is set up under the general laws of the State either by way of repeal or qualification, and the plaintiff's remedy is sought under a general law and not the special charter of the city; wherefore, &c.

(Signed) GRANT, *For Plaintiff*.

Filed May 21st, 1868.

(Signed) W. G. WOODWARD, *Clerk*.

22 Afterward, on the 27th day of May, A. D. 1868, it being of the said May term of the said court, the follow entry of record was made, that is to say:

THE UNITED STATES, EX REL. HENRY Amy
v.
THE MAYOR AND ALDERMEN OF THE city of Burlington. } No. 469.

This cause now coming on to be heard, Grant & Smith for the plaintiff, and Strong for the defendant, upon argument upon the plaintiffs' demurrer to the defendant's return to the writ of alternative mandamus, the said demurrer is overruled, and the plaintiff electing to abide by his demurrer the writ is dismissed at the cost of the relator. The plaintiff prays for a writ of error, which is allowed upon his giving bond in the penal sum of five hundred dollars, as required by law.

23 And thereupon, on the 19th day of June, 1868, a bond was filed in the words following, to wit:

Circuit Court of the United States for the district of Iowa.

Know all men by these presents that we, Henry Amy, as principal, and Charles Whitaker, as surety, are held and firmly bound to the mayor and aldermen of the city of Burlington, in the penal sum of five hundred dollars, to which payment we bind ourselves and each of us.

Given under our hands this 1st day of June, A. D. 1868.

The condition of this obligation is this; that if said obligors shall duly prosecute to effect a writ of error from the Supreme Court of

the United States to the Circuit Court of the same to the district of Iowa, in a cause where the said obligor, Henry Amy, is plaintiff in error, and said obligee, defendant in error, and answer to the defendant in error and pay all costs and damages, and if they
24 fail to make their plea good this obligation is to be void; otherwise to remain in full force.

(Signed) HENRY AMY,
GRANT & SMITH, *His Att'ys.*
(Signed) C. WHITAKER.

We know this bond to be good for the amount named.
(Signed) GRANT & SMITH, *Att'ys.*

Approved:
(Signed) SAM. T. MILLER.

Filed June 19th, 1868.
(Signed) W. G. WOODWARD, *Clerk.*

25 Circuit Court of the United States, district of Iowa.

I, W. G. Woodward, clerk of the Circuit Court of the United States for the district of Iowa, hereby certify that the foregoing twenty-one pages of writing constitute and are a full, true and complete transcript of the record and proceedings, and of the bond filed in the cause above entitled.

In testimony whereof I hereunto set my hand, and affix the seal of the said Circuit Court, at Des Moines, this 22d day of July, A. D. 1868.

W. G. WOODWARD, *Clerk.*

Clerk's fees.

Transcript, 48 fol.....	$5 80
Certif. and seal.....	35
	$6 15

26 Supreme Court of the United States.—Dec'r term, 1868.

THE UNITED STATES ON THE RELATION of Henry Amy, plaintiff in error,
v.
THE MAYOR AND ALDERMEN OF THE city of Burlington.
} Error to the district of Iowa.

Now comes the plaintiff, by Jas. Grant, and says that in the record and proceedings of the court below, there is error in this—

1st. The court erred in overruling the plaintiff's demurrer to the defendant's return to the alternative writ.

2. The court erred in dismissing the plaintiff's writ.

Wherefore he prays that said judgment may be reversed with costs, &c.

GRANT, *For Plaintiff in Error.*